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SUPREME COURT OF THE UNITED STATES.

No. 81.

LEMUEL H. DUNCAN, PLANTIFF IN ERROR,

VERSUS

REUBEN RICKETS.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR EAST TENNESSEE.

DISTRICT OF WEST TENNESSE, *ss.*

At a circuit court of the United States, begun and held at Nashville, in and for the district of west Tennessee aforesaid, on the first Monday, being the fourth day of September, in the year 1837, and in the 62d year of our independence, present, the honorable John Catron, one of the associate justices of the Supreme Court of the United States, and the honorable Morgan W. Brown, judge of the courts of the United States for the districts of East and West Tennessee.

REUBEN RICKETS, Plaintiff,
vs.
LEMUEL H. DUNCAN, Defendant. } Debt.

Lemuel H. Duncan, a citizen of the State of Tennessee, was attached, by writ of capias ad respondendum, issued 19th June, 1837, and returnable to the first Monday in August next, thereafter, to answer Reuben Rickets, a citizen of the State of Mississippi, of a plea that he render to him three thousand dollars, which to him he owed, and from him detained, to his damage two hundred dollars.

And thereupon, at August rules, 1837, the plaintiff, by his attorney, filed his declaration, which is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,

District of West Tennessee, ss.

Reuben Rickets, a citizen of the State of Mississippi, complains of Lemuel H. Duncan, a citizen of the State of Tennessee, in custody, &c. of a plea that he render to him three thousand dollars, which to him he owes, and from him detains; for that the defendant, (together with J. W. P. McGimpsey, and John Briscoe, who are not sued in this action) on the fifteenth of December, 1835, at Nashville, in the district aforesaid, made his certain bill, signed, sealed with his seal, and now shown to the court, and thereby, on or before the first day of March, 1837, promised to pay the plaintiff or order, three thousand dollars, for value received. Yet, the defendant, although often requested, hath not paid the same, nor any part thereof to the plaintiff, but wholly neglects and refuses so to do, to his damage two hundred dollars, and therefore he sues, by his attorneys.

FOSTER & FOGG.

And the plaintiff at said August rules, 1837, gives a rule for a plea. And at September rules, 1837, no plea having been filed, the plaintiff takes judgment by default.

SATURDAY, 9*th September*, 1837.

The plaintiff, by his attorney, appears, and a judgment by default having been entered in this cause, at September rules, 1837, and no motion having been made to have the same set aside: it is therefore considered by the court, that said judgment by default be affirmed, and that the plaintiff recover of the defendant his debt of three thousand dollars, in the declaration mentioned, and the further sum of ninety-four dollars and fifty cents, his damages, sustained by reason of the detention thereof, and his costs in this behalf expended, and that execution issue, &c.

WEDNESDAY, 13*th September*, 1837.

The defendant, by his attorney, moves the court to set aside the judgment entered against him at the present term of this court; which motion, on consideration thereof, the court orders to be overruled.

And thereupon, the defendant prays a writ of error, to the Supreme Court of the United States, to be held at the city of Washington, on the 2d Monday in January next, and also a writ of supersedeas;

which, upon his giving bond and security satisfactory to the court, as required by law, are granted.

BOND.

Know all men by these presents, that we, Lemuel H. Duncan, Calvin H. Nicholson, and Williamson Smith, are held and firmly bound unto Reuben Rickets, in the penal sum of six thousand two hundred dollars; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators jointly, severally, and firmly, by these presents, signed with our names, and sealed with our seals, this 13th day of September, in the year 1837.

The condition of this obligation is as follows:

Whereas, in a certain cause prosecuted and determined in the circuit court of the United States, for the eighth circuit, in the district of West Tennessee, Reuben Rickets being plaintiff, and said Lemuel H. Duncan defendant, such proceedings were had, that at the September term, in the year 1837, of said court, a judgment was rendered in behalf of the plaintiff, against the defendant, for the sum of three thousand dollars, debt, and ninety-four dollars and fifty cents damages, besides costs of suit, from which judgment the said defendant hath prayed and obtained a writ of error, to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday in January next. Now, if the said Lemuel H. Duncan, shall prosecute said writ of error with effect, or in case of failure therein, shall well and truly perform such judgment, sentence or decree, as the said supreme court shall make on the trial of said cause, then this obligation to be void; else, to remain in full force and virtue.

L. H. DUNCAN. [SEAL.]
CALVIN H. NICHOLSON. [SEAL.]
WILLIAMSON SMITH. [SEAL.]

Teste: P. HAY.

DISTRICT OF WEST TENNESSEE.

I, Nathaniel A. McNairy, clerk of the circuit and district courts of the United States, for the district of West Tennessee, aforesaid, do certify, that the foregoing is a correct transcript of the record and proceedings had in said circuit court, between Reuben Rickets, plaintiff, and Lemuel H. Duncan, defendant, as the same remain of record in my office.

In testimony whereof, I hereto subscribe my name, and affix the seal of said court, at office in Nashville, the 10th day of October, in the year 1837, and in the 62d year of our independence.

[SEAL.] N. A. McNAIRY.

By P. HAY.

THE UNITED STATES, *ss.*

The President of the United States to the judges of the circuit court of the United States, for the district of West Tennessee, *greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you or some of you, between Reuben Rickets, plaintiff, and Lemuel H. Duncan, defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all thing concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said supreme court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said supreme court, may cause further to be done therein to correct that error, what of right and according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said supreme court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States, the sixty-first.

N. A. McNAIRY,
Clerk of the Circuit Court, for the District of West Tennesee.

By P. HAY.

THE UNITED STATES, EIGHTH CIRCUIT,

District of West Tennesse.

To Reuben Rickets, *greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 8th circuit, in the district of West Tennessee, wherein Lemuel H. Duncan

is plaintiff in error, and you, the said Reuben Rickets, are defendant, to show cause, if any there be, why the judgment rendered against the said Lemuel H. Duncan, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, one of the associate justices of the Supreme Court of the United States, this 16th day of September, in the year 1837.

J. CATRON.

County, ss.

On this day in the year of our Lord one thousand eight hundred and twenty personally appeared before me and being duly sworn, deposeth and saith, that on the day of he delivered a true copy of the above citation to

We acknowledge legal service of this citation, 18th Sept. 1837.

FOSTER & FOGG,
Attorneys for defendant in error.